

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as: September 26, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-6365.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 19th day of September 1995.

Lonnie J. King,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-23744 Filed 9-25-95; 8:45 am]

BILLING CODE 3410-34-P

## Food Safety and Inspection Service

### 9 CFR Part 381

[Docket No. 95-037DF]

#### Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service is amending the poultry products inspection regulations by terminating the designation of the State of West Virginia under sections 1 through 4, 6 through 10 and 12-22 of the Poultry Products Inspection Act.

**DATES:** This notice of termination of designation rule will be effective on November 27, 1995 unless the Agency receives written adverse comments or written notice of intent to submit adverse comments on or before October 26, 1995.

**ADDRESSES:** Please send an original and two copies of written adverse comments or notice of intent to submit adverse comments to: FSIS Docket Clerk, DOCKET #95-037DF, Regulations Development, Policy, Evaluation and Planning Staff, Room 4352, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. All comments received will be available for public inspection from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday, in Room 4352, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Dr. Connie L. Bacon, Acting Director, Federal-State Relations, Food Safety and

Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-6313.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) authorizes the Secretary of Agriculture to designate a State as one in which the provisions of sections 1-4, 6-10, and 12-22 of the PPIA shall apply to operations and transactions wholly within the State after he/she has determined that requirements at least equal to those imposed under the Act have not been developed and effectively enforced by the State.

On December 3, 1970 (35 FR 18410) notice was published in the Federal Register announcing that the Secretary of Agriculture was designating the State of West Virginia, under paragraph 5(c) (21 U.S.C. 454(c)) of the PPIA, as a State in which this Department is responsible for providing poultry products inspection at eligible establishments and for otherwise enforcing the applicable provisions of the PPIA with respect to intrastate activities in the State.

In addition, on November 12, 1976 (41 FR 49969), a notice was published in the Federal Register announcing that, effective on that date, this Department would assume the responsibility of administering the authorities provided for under sections 11(b), (c), and (d) (21 U.S.C. 460(b), (c) and (d)) of the PPIA regarding certain categories of processors of poultry products.

The aforementioned designation was undertaken by the Department when it was determined that the State of West Virginia was not in a position to enforce inspection requirements under State laws for poultry and poultry products in intrastate commerce that are at least "equal to" the requirements of the PPIA enforced by the Federal Government.

The Commissioner of Agriculture of the State of West Virginia has advised this Department that effective November 27, 1995, the State of West Virginia will be in a position to administer a State poultry inspection program which includes requirements at least "equal to" those imposed under the Federal poultry products inspection program for poultry and poultry products in interstate commerce.

Section 5(c)(3) of the PPIA provides that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State poultry products inspection requirements at least "equal to" those imposed by the Federal

Government under the PPIA, with respect to intrastate operations and transactions within the State, he shall terminate the designation of such State. The Secretary has determined that the State of West Virginia has developed and will enforce such a State poultry products inspection program in accordance with the said provisions of the PPIA. In addition, the Secretary has determined that the State of West Virginia is also in a position to enforce effectively the provisions of section 11(b), (c), and (d) of the PPIA. Therefore, the designation of the State of West Virginia under those sections and sections 1-4, 6-10, and 12-22 of the PPIA is hereby terminated.

##### Effective Date

The Agency is publishing this rule without prior proposal because this action is viewed as noncontroversial and anticipates no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the Federal Register unless the Agency receives written adverse comments within 30 days of the date of publication of this rule in the Federal Register.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed. If the Agency receives written adverse comments, a notice will be published in the Federal Register withdrawing this rule before the effective date and publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

##### Executive Order 12866

This direct final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

##### Executive Order 12778

This direct final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

##### Effect on Small Entities

The Administrator, FSIS, has made a determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory

Flexibility Act (5 U.S.C. 601). This direct final rule will terminate the designation of the State of West Virginia under sections 1 through 4, 6 through 10 and 12–22 of the Poultry Products Inspection Act.

#### List of Subjects in 9 CFR Part 381

Poultry and poultry products.

Accordingly, Part 381 of the poultry products inspection regulations (9 CFR 381) is amended as follows:

#### **PART 381—[AMENDED]**

1. The authority citation for § 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

##### **§ 381.221 [Amended]**

2. Section 381.221 is amended by deleting “West Virginia” from the “State” column and by deleting the date which was added on the line with “West Virginia”.

##### **§ 381.224 [Amended]**

3. Section 381.224 is amended by deleting “West Virginia” from the “State” column in three places and by deleting the dates which were added on the lines with “West Virginia” in three places.

Done at Washington, DC, on: September 20, 1995.

Michael R. Taylor,

*Acting Under Secretary for Food Safety.*

[FR Doc. 95–23741 Filed 9–25–95; 8:45 am]

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## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 50**

**RIN 3150–AF00**

### **Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to provide a performance-based option for leakage-rate testing of containments of light-water-cooled nuclear power plants. This option is available for voluntary adoption by licensees in lieu of compliance with the prescriptive requirements contained in the current regulation. This action improves the focus of the regulations by eliminating prescriptive requirements that are marginal to safety. The final rule allows

test intervals to be based on system and component performance and provides licensees greater flexibility for cost-effective implementation methods of regulatory safety objectives.

**EFFECTIVE DATE:** October 26, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6443, e-mail mkd@nrc.gov

#### **SUPPLEMENTARY INFORMATION:**

Background—Development of Proposed Rule

#### *NRC's Marginal-to-Safety Program*

In 1984, the NRC staff initiated a program to make regulatory requirements more efficient by eliminating those with marginal impact on safety. The NRC's initiative to eliminate requirements marginal to safety recognizes both the dynamic nature of the regulatory process and that the importance and safety contribution of some existing regulatory requirements may not have been accurately predicted when adopted or may have diminished with time. The availability of new technical information and methods justify a review and modification of existing requirements.

The NRC solicited comments from industry on specific regulatory requirements and associated regulatory positions that needed reevaluation. The Atomic Industrial Forum conducted a survey providing most of industry's input, published for the NRC as NUREG/CR–4330<sup>1</sup>, “Review of Light Water Reactor Regulatory Requirements,” Vol. 1, April 1986. A list of 45 candidates for potential regulatory modification were identified. The NRC's review of the list selected Appendix J as one of seven areas requiring further analysis (NUREG/CR–4330, Vols. 2 and 3, dated June 1986 and May 1987). The NRC also conducted a survey of its staff on the same issue. The NRC staff survey identified 54 candidates for regulatory modification, a number of which were previously identified in the industry survey. The NRC's assessment of this

list also selected Appendix J as a potential candidate for modification.

The NRC published in the Federal Register, for comment, a proposed revision to Appendix J on October 29, 1986 (51 FR 39538) to update acceptance criteria and test methods based on experience in applying the existing requirements and advances in containment leak testing methods, to resolve interpretive questions, and to reduce the number of exemption requests. This proposed rule was withdrawn from further consideration and superseded with a more comprehensive revision of Appendix J.

The NRC published a notice in the Federal Register on February 4, 1992 (57 FR 4166), presenting its conclusion that Appendix J was a candidate whose requirements may be relaxed or eliminated based on cost-benefit considerations. On the basis of NRC staff analyses of public comments on the proposal, the Commission approved and announced on November 24, 1992 (57 FR 55156) its plans to initiate rulemaking for developing a performance-oriented and risk-based regulation for containment leakage-testing requirements. On January 27, 1993, (58 FR 6196) the NRC staff published a general framework for developing performance-oriented and risk-based regulations and, at a public workshop on April 27 and 28, 1993, invited discussions of specific proposals for modifying containment leakage-testing requirements. Industry and public comments on the proposals, and other recommendations and innovative ideas raised at the public workshop, were documented in the proceedings of the workshop (NUREG/CP–0129, September 1993). Specifically, the NRC concluded that the allowable containment leakage rate utilized in containment testing may be increased and other Appendix J requirements need not be as prescriptive as the current requirements. To increase flexibility, the detailed and prescriptive technical requirements contained in Appendix J regulations could be improved and replaced with performance-based requirements and supporting regulatory guides. The regulatory guides would allow alternative approaches, although compliance with existing regulatory requirements would continue to be acceptable. The performance-based requirements would reward superior operating practices.

The present rulemaking is part of this overall effort and initiative for eliminating requirements that are marginal to safety and is guided by the policies, framework and criteria for the

<sup>1</sup> Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.